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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,256	11/19/2003	Erich Schwaerzler	12761/293065	7703
7590	05/18/2006		EXAMINER	
John M. Harrington Kilpatrick Stockton LLP 1001 West Fourth Street Winston-Salem, NC 27101			HAWK, NOAH CHANDLER	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/717,256	SCHWAERZLER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Noah C. Hawk	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 23 February 2006.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4 and 16 is/are rejected.  
 7) Claim(s) 5-15 and 17 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

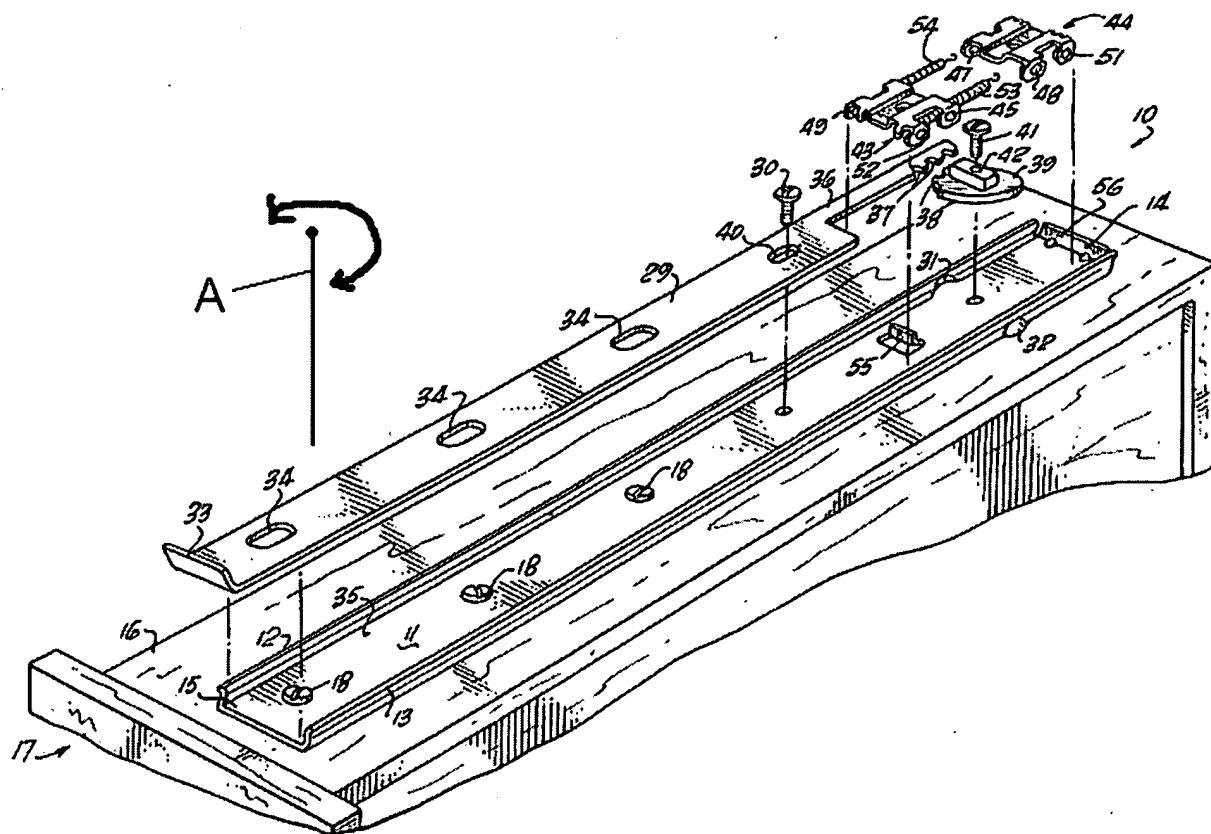
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Delmege et al. in US Patent 4679950.

a. Regarding Claim 1, Delmege et al. disclose a panel adjustment device as structurally claimed for a drawer having a front panel and mounted in a drawer opening of a cabinet by means of a rail system with at least one each of a drawer rail (11) and a cabinet rail (19), the panel adjustment device comprising a lifting and lowering device (the combination of 29, 33, 36, 41, and 39) located between the drawer and the drawer rail to swivel the drawer relative to the drawer rail about a swiveling axis (A) which is closer to the front of the drawer than the rear, the lifting and lowering device further comprising a lifting and lowering element (39) to swivel the drawer. Please note: the limitations "operable for changing an enclosed inclination angle defined between a front side of the drawer opening of the cabinet and the front panel of the drawer" and "being operable to urge the drawer with the front panel attached to the drawer to swivel relative to the drawer rail about the swiveling axis resulting in a corresponding change in the enclosed

inclination angle defined between the front panel of the drawer and the front side of the drawer opening" are considered functional language and are not given any patentable weight.



Delmege et al., Figure 2

b. Regarding Claim 2, Delmege et al. further disclose a panel adjustment device wherein the swiveling axis (A) is closer to the front panel of the drawer than to the lifting and lowering element of the lifting and lowering device (best seen in Delmege et al., Figure 2).

c. Regarding Claim 3, Delmege et al. further disclose that the swiveling axis (A) lies on the drawer rail and the lifting and lowering element (39) of the lifting and lowering device is disposed in a rear area of the drawer on a lower compartment of the drawer (best seen in Delmege et al., Figure 1).

d. Regarding Claim 4, Delmege et al. further disclose that the lifting and lowering device further comprises a slider (36), an operating element (33) for the lifting and lowering element disposed in a front area of the drawer and a connection element (29) connecting the lifting and lowering element in the rear area of the drawer with the operating element in the front area of the drawer.

3. Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Delmege et al. Delmege et al. disclose a panel adjustment device as structurally claimed for a drawer equipped having a front panel and mounted in a drawer opening of a cabinet and supported on by means of a rail system with at least one each of a drawer rail (11) and a cabinet rail (19) which panel adjustment device is suitable for changing an enclosed inclination angle between the front of the opening and the drawer, the panel adjustment device comprising a lifting and lowering device (the combination of 29, 33, 36, 41, and 39) that operates between the drawer and the drawer rail to swivel the drawer relative to the drawer rail about a swiveling axis, the lifting and lowering device further comprising a slider (the combination of 33, 29 and 36) and a lifting and lowering element (39) so that a swiveling of the drawer and with it, the front panel of the drawer is made possible around the swiveling axis (A) and wherein the slider is formed out of a flat material (best seen in Delmege et al., Figure 2) which extends from a front area of

the drawer rail to a back area of the drawer rail and is held movable in the front area of the drawer rail up to a center area on a horizontal shank (18) of a side wall lower component of the drawer and wherein the slider has a rear area (36) that is supported on the drawer rail with an end (37) of the slider formed as a wedge-shaped sliding piece. Please note: the limitations "operable for changing an enclosed inclination angle defined between a front side of the drawer opening of the cabinet and the front panel of the drawer" and "being operable to urge the drawer with the front panel attached to the drawer to swivel relative to the drawer rail around the swiveling axis" are considered functional language and are not given any patentable weight.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Hiers in US Patent 2928696.

e. Regarding Claims 1 and 2, Hiers discloses a panel adjustment device, as structurally claimed, for a drawer equipped with a front panel, and a rail system having a drawer rail (12) supporting the drawer and a cabinet rail (24), the device comprising a lifting and lowering device (the combination of 31, 33, 35, and 37) having a lifting and lowering element (33) and a swiveling axis (21), the swiveling axis being closer to the front of the drawer than the lifting and lowering element, and the lifting and lowering element being operable to urge the drawer to swivel. Please note: the limitations "operable for changing an enclosed inclination angle defined between a front side of the drawer opening of the cabinet and the front panel of the drawer" and "being operable to urge the drawer with the front panel attached to the drawer to swivel relative to the drawer rail about the swiveling

axis resulting in a corresponding change in the enclosed inclination angle defined between the front panel of the drawer and the front side of the drawer opening" are considered functional language and are not given any patentable weight.

f. Regarding Claim 3, Hiers further discloses that the swiveling axis lies on the drawer rail and the lifting and lowering element is at the rear of the drawer.

***Allowable Subject Matter***

5. Claims 5-15 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed 2/23/06 have been fully considered but they are not persuasive.

7. Delmege discloses a device that is structurally indistinct from that of the applicant's claims 1-4 and 16. The use of functional language in the claim is not given any patentable weight, as noted above.

8. Hiers also discloses a device that is structurally indistinct from that of the applicant's claims 1-3. Hiers specifically discloses a lifting and lowering element – not merely a slotted hole, but an element to control the height of the drawer in the slotted hole. The device of Hiers will swivel about the front roller, which, as shown in Hiers,

Figure 1 is closer to the front of the drawer than the rear. The use of functional language in the claim is not given any patentable weight, as noted above.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NCH  
NCH

5/11/06



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